

**RESOLUTION AUTHORIZING THE EXECUTION, DELIVERY AND PERFORMANCE OF A SCHEDULE TO THE MASTER LEASE BETWEEN BANC OF AMERICA PUBLIC CAPITAL CORP AND THE CITY OF MEMPHIS, TENNESSEE, RELATING TO THE ACQUISITION OF SOLID WASTE REFUSE TRUCKS AND TO APPROVE CERTAIN OTHER MATTERS RELATING THERETO FOR THE LEASE**

**WHEREAS**, on June 30, 2011, the City of Memphis (the "City") solicited and received bids from qualified municipal lease providers to serve as financing agent for the City's proposed acquisition of Packer Bodies, Cab, and Chassis for packer Bodies ("Solid Waste Refuse Trucks"); and

**WHEREAS**, it was determined by the City that the bid submitted by Banc of America Public Capital Corp was the best bid and provides the lowest cost to the City; and

**WHEREAS**, on December 30, 2010, the City entered into a Master Equipment Lease with Banc of America Public Capital Corp (the "Master Equipment Lease") relating to the acquisition of red light camera equipment; and

**WHEREAS**, the proposed lease of the Solid Waste Refuse Trucks (the "Lease Documents") can be added as a schedule to the Master Equipment Lease; and

**WHEREAS**, the Master Equipment Lease is subject to termination for non-appropriation, without cause, in any year; and

**WHEREAS**, Council approval is required prior to the Mayor's execution of the Lease Documents.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Memphis as follows:

Section 1. Authorization of Lease Documents. The form, terms and provisions of the Lease Documents presented to this Council are hereby approved, and all of the terms and provisions thereof, including the annual rentals payable thereunder, are hereby incorporated herein by this reference as if the Lease Documents were set out in this Resolution in its entirety. The Mayor of the City or his designee are hereby authorized, empowered and directed to execute, acknowledge and deliver the Lease Documents. The Lease Documents shall be in substantially the forms attached hereto and hereby approved, with such changes, insertions or omissions as may be deemed reasonably necessary by the persons executing the same, upon advice of counsel, to accomplish the purposes of the transaction contemplated therein and in this Resolution and as shall not be inconsistent with or contrary to such purposes. The execution of the Lease Documents shall constitute conclusive evidence that the Lease Documents and any and all changes thereto have been approved by the persons executing the Lease Documents.

Section 2. Information Reporting. Any officer of the City is hereby authorized to sign and file or cause to be filed a completed I.R.S. Form 8038-G, "Information Return for Tax-

Exempt Governmental Obligations,” as required by Section 149(e) of the Internal Revenue Code of 1986, as amended (the “Code”).

Section 3. Non-Arbitrage Certificate. Any officer of the City is hereby authorized to execute a non-arbitrage certificate in order to comply with Section 148 of the Code, and the applicable income tax regulations thereunder.

Section 4. No Personal Liability. No stipulation, obligation or agreement herein contained or contained in the Lease Documents shall be deemed to be a stipulation, obligation or agreement of any commissioner, officer, agent or employee of the City in his individual capacity.

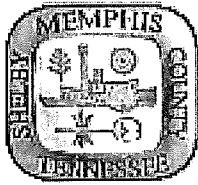
Section 5. General Authority. From and after the execution and delivery of the documents hereinabove authorized and consented to, the Mayor of the City, his designee, and the proper officers, agents and employees of the City are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of said documents as executed and are further authorized to take any and all further actions and execute and deliver any and all other documents and certificates as may be necessary or desirable in connection with the execution and delivery of the Lease Documents and to document compliance with the Code.

Section 6. Actions Ratified, Approved and Confirmed. All acts and doings of the officers of the City which are in conformity with the purposes and intents of this Resolution and the execution, delivery and performance of the Lease Documents shall be, and the same hereby are, in all respects ratified, approved and confirmed.

Section 7. Severability of Invalid Provisions. If any one or more of the agreements or provisions herein contained shall be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining agreements and provisions and shall in no way affect the validity of any of the other agreements and provisions hereof.

Section 8. Repealing Clause. All resolutions or parts thereof of the City in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

ADOPTED this \_\_\_\_\_ day of September, 2011.



## **Memphis City Council Summary Sheet**

### **Resolution for Master Lease Agreement**

- Resolution Authorizing the execution, delivery and performance of a schedule to The Master Lease Between Banc of America Public Capital Corp and The City of Memphis, Tennessee, relating to the acquisition of Solid Waste Refuse Trucks in an amount not to exceed Eight Million Nine Hundred Sixty-Three Thousand Two Hundred Dollars (\$8,963,200) Principal amount At a rate of 1.299% for a term of five (5) years and to approve certain other matters relating thereto for the lease.
- The initiating party is the Division of Finance.
- This resolution does not change any existing Ordinance or Resolution.
- The resolution does not require new contracts, or amend an existing contract.

## SCHEDULE OF PROPERTY NO. 2

**Re: Master Equipment Lease/Purchase Agreement, dated as of December 30, 2010, between Banc of America Public Capital Corp, as Lessor, and the City of Memphis, Tennessee, as Lessee**

1. *Defined Terms.* All terms used herein have the meanings ascribed to them in the above-referenced Master Equipment Lease/Purchase Agreement (the "*Master Equipment Lease*").

2. *Equipment.* The items of Equipment listed on Exhibit B are hereby included under this Schedule of the Master Equipment Lease.

3. *Payment Schedule.*

(a) *Rental Payments.* The Rental Payments shall be in such amounts and payable on such dates as set forth in the Rental Payment Schedule attached to this Schedule as Exhibit A. Rental Payments shall commence on February 1, 2012.

(b) *Purchase Price Schedule.* The Purchase Price on each Rental Payment date for the Equipment listed in this Schedule shall be the amount set forth for such Rental Payment date in the "Purchase Price" column of the Rental Payment Schedule attached to this Schedule. The Purchase Price is in addition to all Rental Payments then due under this Schedule (including the Rental Payment shown on the same line in the Rental Payment Schedule).

4. *Representations, Warranties and Covenants.* Lessee hereby represents, warrants and covenants that its representations, warranties and covenants set forth in the Master Equipment Lease are true and correct as though made on the date of commencement of Rental Payments on this Schedule. Lessee further represents and warrants that (a) no material adverse change in Lessee's financial condition has occurred since the date of the Master Equipment Lease; (b) the governing body of Lessee has authorized the execution and delivery of this Agreement and the Leases pursuant to an Ordinance duly enacted by the Mayor and City Council of the City of Memphis, Tennessee on September \_\_, 2011; (c) the Equipment described in the Agreement referenced above is essential to the functions of Lessee or to the services Lessee provides its citizens; (d) Lessee has an immediate need for, and expects to make immediate use of, substantially all such Equipment, which will be used by Lessee only for the purpose of performing one or more of Lessee's governmental or proprietary functions consistent with the permissible scope of its authority; and (e) Lessee expects and anticipates adequate funds to be available for all future payments or rent due after the current budgetary period.

5. *The Lease.* The terms and provisions of the Master Equipment Lease (other than to the extent that they relate solely to other Schedules or Equipment listed on other Schedules) are hereby incorporated into this Schedule by reference and made a part hereof.

6. *Lease Proceeds.* The Lease Proceeds which Lessor shall pay to the Acquisition Fund Custodian in connection with this Schedule is \$9,000,000. It is expected that by six (6)

months from the date of this Schedule No. 2, Lessee will have taken possession of all items of Equipment and that a Lessee's Acceptance Certificate will be signed by Lessee and delivered to Lessor on or before six (6) months from the date of this Schedule No. 2.

7. *Acquisition Period.* The Acquisition Period applicable to this Schedule shall end at the conclusion of the sixth month following the date hereof.

8. *Lease Term.* The Lease Term shall consist of the Original Term and 4 consecutive one-year Renewal Terms, and a final Renewal Term ending on August 1, 2016.

9. *Maximum Equipment Cost.* The Maximum Equipment Cost approved on a cumulative basis under the Lease for this Schedule and all previous Schedules is \$11,250,000.

10. *Contract Rate.* The Contract Rate for this Schedule is 1.2995%.

11. *Prepayment.* Lessee may not prepay this Schedule.

[Remainder of Page Intentionally Left Blank]

Dated: October \_\_, 2011

LESSOR:

Banc of America Public Capital Corp  
555 California Street, 4th Floor  
San Francisco, California 94104  
Attention: Contract Administration  
Fax No.: (415) 765-7373

LESSEE:

City of Memphis, Tennessee  
125 North Main Street, Room 336  
Memphis, Tennessee 38103  
Attention: City Attorney  
Fax No.: (901) 576-6614

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

A C Wharton, Jr., Mayor

(Seal)

Attest:

By: \_\_\_\_\_

Patrice Thomas, Comptroller

Counterpart No. \_\_\_\_\_ of \_\_\_\_\_ manually executed and serially numbered counterparts.  
To the extent that this Lease constitutes chattel paper (as defined in the Uniform Commercial Code), no security interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

# EXHIBIT A

## RENTAL PAYMENT SCHEDULE

date	funding	Rental Payment	interest	principal	Purchase Price
-----	-----	-----	-----	-----	-----
Oct-04-11	\$8,963,200.00				\$8,963,200.00
Feb-01-12		\$926,564.01	\$37,854.95	\$888,709.05	\$8,074,490.95
Aug-01-12		\$926,564.01	\$52,464.00	\$874,100.00	\$7,200,390.95
Feb-01-13		\$926,564.01	\$46,784.54	\$879,779.47	\$6,320,611.48
Aug-01-13		\$926,564.01	\$41,068.17	\$885,495.83	\$5,435,115.65
Feb-01-14		\$926,564.01	\$35,314.66	\$891,249.34	\$4,543,866.30
Aug-01-14		\$926,564.01	\$29,523.77	\$897,040.24	\$3,646,826.07
Feb-01-15		\$926,564.01	\$23,695.25	\$902,868.75	\$2,743,957.32
Aug-01-15		\$926,564.01	\$17,828.86	\$908,735.14	\$1,835,222.17
Feb-01-16		\$926,564.01	\$11,924.36	\$914,639.65	\$920,582.52
Aug-01-16		\$926,564.01	\$5,981.48	\$920,582.52	\$0.00
	-----	-----	-----	-----	
	\$8,963,200.00	\$9,265,640.06	\$302,440.06	\$8,963,200.00	

For purposes of this Lease, "*Taxable Rate*," with respect to the interest component of Rental Payments, means an annual rate of interest equal to 2.022%.

[Signature to Follow]

LESSEE:

CITY OF MEMPHIS, TENNESSEE

By: \_\_\_\_\_  
A C Wharton, Jr., Mayor

[Signature Page to Lease Schedule Exhibit A]



**EXHIBIT B**

**EQUIPMENT LIST**

32 cubic yard rear-loading high compaction compactor body.

October \_\_, 2011

Banc of America Public Capital Corp  
San Francisco, California

RE: Master Lease Agreement dated as of December 30, 2010, and Schedule No. 2 to Master Lease Agreement, dated as of October \_\_, 2011 between City of Memphis, Tennessee and Banc of America Public Capital Corp

To the Addressees:

We are delivering this opinion in connection with the delivery of the Master Equipment Lease/Purchase Agreement and Schedule No. 2 to the Master Equipment Lease/Purchase Agreement (together, the "Master Lease Agreement"), between Banc of America Public Capital Corp (the "Bank") and the City of Memphis, Tennessee (the "City"). Pursuant to the Master Lease Agreement, the City agrees to make certain rental payments (the "Rental Payments") as described therein. The Rental Payments include portions designated as interest as provided in the Master Lease Agreement.

The proceeds of the Master Lease Agreement are to be allocated by the City to the purchase of certain essential equipment to be used by the City.

We have examined (i) executed counterparts of the Master Lease Agreement and (ii) certain other certificates and documents submitted to us by or on behalf of the City and the Bank, which are included in the closing transcript for the Master Lease Agreement. Further, we have made such examination of the Constitution and laws of the United States of America as we have deemed necessary in order to deliver this opinion.

In our examination, we have assumed the genuineness of all signatures and the authenticity of all documents submitted to us as originals, and conformity to original documents of all documents submitted to us as certified or photostatic copies. As to various questions of fact material to our opinions we have relied solely upon the representations of the City contained in the Master Lease Agreement and upon certifications of officers or other representatives of the City.

As to the due authorization, execution, delivery and enforceability of the Master Lease Agreement and other matters, we have relied solely upon an opinion of counsel for the City of even date herewith.

October \_\_, 2011

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In rendering the opinion as set forth in Paragraph 2 below, we have relied upon the representations, certifications and covenants of the City with respect to the use of the proceeds made available under the Master Lease Agreement and the facilities being financed thereby, without undertaking to verify the same by independent investigation. Our opinion in Paragraph 2 below assumes that the City will not make use of the equipment financed under the Master Lease Agreement in a manner that will cause "private business use" as such term is defined in the Internal Revenue Code of 1986, as amended (the "Code") and any Treasury Regulations adopted in accordance therewith.

Based upon and subject to the foregoing, it is our opinion that:

1. The Master Lease Agreement constitutes the valid and binding obligation of the City, enforceable in accordance with its terms; provided, however, no opinion is expressed with respect to the enforceability of any of the indemnification or similar provisions in the Master Lease Agreement.

2. The portion of the Rental Payments payable by the City under the Master Lease Agreement which is designated as interest (the "Supplemental Payments"), as provided in the Master Lease Agreement, to the extent received by the Bank from or on behalf of the City, is excludable from gross income for federal income tax purposes under the Code, and is not an item of tax preference for the purposes of computing the federal alternative minimum tax imposed on individuals and corporations. The opinions set forth in the preceding sentence are subject to the condition that the City comply with all requirements of the Code that must be satisfied subsequent to the City's execution of the Master Lease Agreement in order that the portion of the Rental Payments which is designated as interest be, and continue to be, excluded from gross income for federal income tax purposes. The City has covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause that portion of the Supplemental Payments to be included in gross income for federal income tax purposes retroactive to the date of the Master Lease Agreement. We express no opinion regarding other federal tax consequences arising with respect to the Master Lease Agreement, and we express no opinion as to the tax exemption, state or federal, of the interest component of any amount paid by any party other than the City after the termination of the City's Master Lease Agreement upon the occurrence of an Event of Non-Appropriation thereunder (as defined in the Master Lease Agreement).

It is to be understood that the enforceability of the Master Lease Agreement may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted and that their enforcement may also be subject to the exercise of judicial discretion in appropriate cases, and our opinions herein

October \_\_, 2011

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are qualified by reference to such limitations.

No one is authorized to rely upon this opinion other than the addressees hereof. The opinion is delivered on the date hereof and is based upon the facts represented and the law as of the date hereof. No undertaking is made to amend, supplement or otherwise change this opinion based upon any event or change in circumstances or laws subsequent to the date hereof. Reliance on this opinion is limited to the addressee hereof.

Very truly yours,

**SMITH, GAMBRELL & RUSSELL, LLP**

By: \_\_\_\_\_  
James P. Monacell

## **TAX AGREEMENT AND ARBITRAGE CERTIFICATE**

This **TAX AGREEMENT AND ARBITRAGE CERTIFICATE** (this "Certificate") is issued by **CITY OF MEMPHIS, TENNESSEE** ("Lessee") in favor of **BANC OF AMERICA PUBLIC CAPITAL CORP** ("Lessor") in connection with that certain Master Equipment Lease/Purchase Agreement dated December 30, 2010 (the "Agreement") and the Schedule No. 1 to the Agreement dated October \_\_, 2011 (the "Equipment Schedule"), each by and between Lessor and Lessee. The terms capitalized herein but not defined herein shall have the meanings assigned to them in the Agreement.

### **Section 1. In General.**

1.1. This Certificate is executed for the purpose of establishing the reasonable expectations of Lessee as to future events regarding the financing of certain equipment (the "Equipment") to be acquired by Lessor and leased to Lessee pursuant to and in accordance with the Equipment Schedule referenced above (the "Equipment Schedule") executed under the Agreement (together with all related documents executed pursuant thereto and contemporaneously herewith, the "Financing Documents"). As described in the Financing Documents, Lessor shall apply up to \$9,000,000 (the "Principal Amount") toward the acquisition of the Equipment and Lessee shall make Rental Payments under the terms and conditions as set forth in the Financing Documents.

1.2. The individual executing this Certificate on behalf of Lessee is an officer of Lessee delegated with the responsibility of reviewing and executing the Financing Documents, pursuant to the resolution or other official action of Lessee adopted with respect to the Financing Documents, a copy of which has been delivered to Lessor.

1.3. The Financing Documents are being entered into for the purpose of providing funds for financing the cost of acquiring, equipping and installing the Equipment which is essential to the governmental functions of Lessee, which Equipment is described in the Equipment Schedule.

1.4. Lessee will timely file for each payment schedule issued under the Lease a Form 038-G (or, if the invoice price of the Equipment under such schedule is less than \$100,000, a Form 8038-GC) relating to such Lease with the Internal Revenue Service in accordance with Section 149(e) of the Internal Revenue Code of 1986, as amended (the "Code").

### **Section 2. Non-Arbitrage Certifications.**

2.1. The Rental Payments due under the Financing Documents will be made with monies retained in Lessee's general operating fund (or an account or subaccount therein). No sinking, debt service, reserve or similar fund or account will be created or maintained for the payment of the Rental Payments due under the Financing Documents or pledged as security therefor.

2.2. There have been and will be issued no obligations by or on behalf of Lessee that would be deemed to be (i) issued or sold within fifteen (15) days before or after the date of issuance of

the Financing Documents, (ii) issued or sold pursuant to a common plan of financing with the Financing Documents and (iii) paid out of substantially the same source of funds as, or deemed to have substantially the same claim to be paid out of substantially the same source of funds as, the Financing Documents.

2.3. The Lessee does not and will not have on hand any funds that are or will be restricted, segregated, legally required or otherwise intended to be used, directly or indirectly, as a substitute, replacement or separate source of financing for the Equipment.

2.4. No portion of the Principal Amount is being used by Lessee to acquire investments which produce a yield materially higher than the yield realized by Lessor from Rental Payments received under the Financing Documents.

2.5. The Principal Amount does not exceed the amount necessary for the governmental purpose for which the Financing Documents were entered into. Such funds are expected to be needed and fully expended for payment of the costs of acquiring, equipping and installing the Equipment.

2.6. Lessee does not expect to convey, sublease or otherwise dispose of the Equipment, in whole or in part, at a date which is earlier than the final Payment Date under the Financing Documents.

### **Section 3. Disbursement of Funds; Reimbursement to Lessee.**

3.1. It is contemplated that the entire Principal Amount will be used to pay the acquisition cost of Equipment to the vendors or manufacturers thereof, provided that, if applicable, a portion of the principal amount may be paid to Lessee as reimbursement for acquisition cost payments already made by it so long as the conditions set forth in Section 3.2 below are satisfied.

3.2. Lessee shall not request that it be reimbursed for Equipment acquisition cost payments already made by it unless each of the following conditions have been satisfied:

(a) Lessee adopted a resolution or otherwise declared its official intent in accordance with Treasury Regulation § 1.150-2 (the "Declaration of Official Intent"), wherein Lessee expressed its intent to be reimbursed from the proceeds of a borrowing for all or a portion of the cost of the Equipment, which expenditure was paid to the Vendor not earlier than sixty (60) days before Lessee adopted the Declaration of Official Intent;

(b) The reimbursement being requested will be made by a written allocation before the later of eighteen (18) months after the expenditure was paid or eighteen (18) months after the items of Equipment to which such payment relates were placed in service;

(c) The entire payment with respect to which reimbursement is being sought is a capital expenditure, being a cost of a type properly chargeable to a capital account under general federal income tax principles; and

(d) Lessee will use any reimbursement payment for general operating expenses and not in a manner which could be construed as an artifice or device under Treasury Regulation § 1.148-10 to avoid, in whole or in part, arbitrage yield restrictions or arbitrage rebate requirements.

#### **Section 4. Use and Investment of Funds; Temporary Period.**

4.1. Lessee has incurred or will incur, within six (6) months from the date of issuance of the Financing Documents, binding obligations to pay an amount equal to at least five percent (5%) of the Principal Amount toward the costs of the Equipment. An obligation is not binding if it is subject to contingencies within Lessee's control. The ordering and acceptance of the items of Equipment will proceed with due diligence to the date of final acceptance of the Equipment.

4.2. An amount equal to at least eighty-five percent (85%) of the Principal Amount will be expended to pay the cost of the Equipment by the end of the three-year period commencing on the date of this Certificate. No portion of the Principal Amount will be used to acquire investments that do not carry out the governmental purpose of the Financing Documents and that have a substantially guaranteed yield of four (4) years or more.

4.3. (a) Lessee covenants and agrees that it will rebate an amount equal to excess earnings, if any, on the Principal Amount to the Internal Revenue Service if required by, and in accordance with, Section 148(f) of the Code, and make the annual determinations and maintain the records required by and otherwise comply with the regulations applicable thereto. Lessee reasonably expects to cause the Equipment to be acquired by December 31, 2011.

(b) Lessee will provide evidence to Lessor that the rebate amount has been calculated and paid to the Internal Revenue Service in accordance with Section 148(f) of the Code unless (i) the entire Principal Amount is expended on the Equipment by the date that is the six-month anniversary of the Financing Documents or (ii) the Principal Amount is expended on the Equipment in accordance with the following schedule: At least fifteen percent (15%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment within six months from the date of issuance of the Financing Documents; at least sixty percent (60%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment within 12 months from the date of issuance of the Financing Documents; and one hundred percent (100%) of the Principal Amount and interest earnings thereon will be applied to the cost of the Equipment prior to eighteen (18) months from the date of issuance of the Financing Documents.

(c) Lessee hereby covenants that (i) Lessee is a governmental unit with general tax powers; (ii) the Lease is not a "private activity bond" under Section 141 of the Code; (iii) at least ninety-five percent (95%) of the Principal Amount is used for the governmental activities of Lessee.

## **Section 5. No Private Use; No Consumer Loan.**

5.1. Lessee will not exceed the private use restrictions set forth in Section 141 of the Code. Specifically, Lessee will not permit more than 10% of the Principal Amount to be used for a Private Business Use (as defined herein) if, in addition, the payment of more than ten percent (10%) of the Principal Amount plus interest earned thereon is, directly or indirectly, secured by (i) any interest in property used or to be used for a Private Business Use or (ii) any interest in payments in respect of such property or derived from any payment in respect of property or borrowed money used or to be used for a Private Business Use.

In addition, if both (A) more than five percent (5%) of the Principal Amount is used as described above with respect to Private Business Use and (B) more than five percent (5%) of the Principal Amount plus interest earned thereon is secured by Private Business Use property or payments as described above, then the excess over such five percent (5%) (the "Excess Private Use Portion") will be used for a Private Business Use related to the governmental use of the Equipment. Any such Excess Private Use Portion of the Principal Amount will not exceed the portion of the Principal Amount used for the governmental use of the particular project to which such Excess Private Use Portion is related. For purposes of this paragraph 5.1, "Private Business Use" means use of bond proceeds or bond financed-property directly or indirectly in a trade or business carried on by a natural person or in any activity carried on by a person other than a natural person, excluding, however, use by a state or local governmental unit and excluding use as a member of the general public.

5.2. No part of the Principal Amount or interest earned thereon will be used, directly or indirectly, to make or finance any loans to non-governmental entities or to any governmental agencies other than Lessee.

## **Section 6. No Federal Guarantee.**

6.1. Payment of the principal or interest due under the Financing Documents is not directly or indirectly guaranteed, in whole or in part, by the United States or an agency or instrumentality thereof.

6.2. No portion of the Principal Amount or interest earned thereon shall be (i) used in making loans the payment of principal or interest of which are to be guaranteed, in whole or in part, by the United States or any agency or instrumentality thereof, or (ii) invested, directly or indirectly, in federally insured deposits or accounts if such investment would cause the financing under the Financing Documents to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

## **Section 7. Miscellaneous.**

7.1. Lessee shall keep a complete and accurate record of all owners or assignees of the Financing Documents in form and substance satisfactory to comply with the registration requirements of Section 149(a) of the Code unless Lessor or its assignee agrees to act as Lessee's agent for such purpose.



7.2. Lessee shall maintain complete and accurate records establishing the expenditure of the Principal Amount and interest earnings thereon for a period of five (5) years after payment in full under the Financing Documents.

7.3. To the best of the undersigned's knowledge, information and belief, the above expectations are reasonable and there are no other facts, estimates or circumstances that would materially change the expectations expressed herein.

**IN WITNESS WHEREOF**, this Tax Agreement and Arbitrage Certificate has been executed on behalf of Lessee as of October \_\_, 2011

CITY OF MEMPHIS, TENNESSEE

By: \_\_\_\_\_

Name: A C Wharton, Jr.

Title: Mayor

Attested By:

\_\_\_\_\_  
Name: Patrice Thomas

Title: Comptroller

## **ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENT**

This ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENT (this "Agreement"), dated as of October \_\_, 2011, by and among BANC OF AMERICA PUBLIC CAPITAL CORP (hereinafter referred to as "Lender"), THE CITY OF MEMPHIS, TENNESSEE, a public body corporate and politic organized and existing under the laws of the State of Tennessee (hereinafter referred to as "City") and DEUTSCHE BANK NATIONAL TRUST COMPANY, a national trust company (hereinafter referred to as "Acquisition Fund Custodian").

Reference is made to that certain Master Equipment/Lease Purchase Agreement, dated as of December 30, 2010 between Lender and the City (hereinafter referred to as the "Master Lease Agreement"), covering the acquisition of the Equipment described therein (the "Subject Property"). It is a requirement of the Schedule No. 2 to the Master Lease Agreement that a sum be deposited into an escrow under terms satisfactory to Lender, for the purpose of fully funding the Master Lease Agreement, and providing a mechanism for the application of such amounts to the purchase of and payment for the Subject Property.

The parties agree as follows:

1. Creation of Acquisition Fund.

(a) There is hereby created a special trust fund to be known as the "City of Memphis, Tennessee Acquisition Fund" (the "Acquisition Fund") to be held in trust by the Acquisition Fund Custodian for the purposes stated herein, for the benefit of Lender and City, into which Acquisition Fund is deposited the sum described in the Closing Statement delivered at closing to be held, disbursed and returned in accordance with the terms hereof.

(b) The Acquisition Fund Custodian shall invest and reinvest moneys on deposit in the Acquisition Fund in Qualified Investments in accordance with written instructions received from City. City shall be solely responsible for ascertaining that all proposed investments and reinvestments are Qualified Investments and that they comply with federal, state and local laws, regulations and ordinances governing investment of such funds and for providing appropriate notice to the Acquisition Fund Custodian for the reinvestment of any maturing investment. Accordingly, neither the Acquisition Fund Custodian nor Lender shall be responsible for any liability, cost, expense, loss or claim of any kind, directly or indirectly arising out of or related to the investment or reinvestment of all or any portion of the moneys on deposit in the Acquisition Fund, and City agrees to and does hereby release the Acquisition Fund Custodian and Lender from any such liability, cost, expenses, loss or claim. Interest on the Acquisition Fund shall become part of the Acquisition Fund, and gains and losses on the investment of the moneys on deposit in the Acquisition Fund shall be borne by the Acquisition Fund. For purposes of this agreement, "Qualified Investments" means any investments which meet the requirements set forth in Tenn. Code Ann. §6-56-106. IN THE ABSENCE OF WRITTEN INSTRUCTIONS, THE ACQUISITION FUND CUSTODIAN IS HEREBY AUTHORIZED AND DIRECTED TO INVEST AND RE-INVEST ALL FUNDS ON HAND

IN DIRECT OBLIGATIONS OF THE UNITED STATES OF AMERICA WITH FOUR (4) WEEKS MATURITY AND WITH AN AUTOMATIC FOUR (4) WEEKS ROLL-OVER UNTIL OTHERWISE DIRECTED.

(c) Unless the Acquisition Fund is earlier terminated in accordance with the provisions of paragraph (d) below, amounts in the Acquisition Fund shall be disbursed by the Acquisition Fund Custodian in payment of amounts described in Section 2 hereof upon receipt of written authorization(s) from Lender, as is more fully described in Section 2 hereof. If the amounts in the Acquisition Fund are insufficient to pay such amounts, City shall provide any balance of the funds needed to complete the Subject Property. Any moneys remaining in the Acquisition Fund after January 31, 2012 (the period through said date being the "Acquisition Period") shall be applied as provided in Section 4 hereof.

(d) The Acquisition Fund shall be terminated at the earliest of (i) the final distribution of amounts in the Acquisition Fund or (ii) written notice given by Lender of the occurrence of a default or termination of the Master Lease Agreement due to non-appropriation.

(e) The Acquisition Fund Custodian may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Acquisition Fund Custodian shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument nor as to the identity, authority, or right of any person executing the same; and its duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as the Acquisition Fund Custodian, and for the disposition of the same in accordance herewith.

(f) Unless the Acquisition Fund Custodian is guilty of gross negligence or willful misconduct with regard to its duties hereunder, to the extent permitted by law City agrees to and does hereby release and indemnify the Acquisition Fund Custodian and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expense, fees or charges of any character or nature, which it may incur or with which it may be threatened by reason of its acting as Acquisition Fund Custodian under this agreement; and in connection therewith, will to the extent permitted by law reimburse the Acquisition Fund Custodian for any and all expenses; including reasonable attorneys' fees and the cost of defending any action, suit or proceeding or resisting any claim.

(g) If City and Lender shall be in disagreement about the interpretation of the Master Lease Agreement, or about the rights and obligations, or the propriety of any action contemplated by the Acquisition Fund Custodian hereunder, the Acquisition Fund Custodian may, but shall not be required to, file an appropriate civil action to resolve the disagreement. The Acquisition Fund Custodian shall be reimbursed by City for all costs, including reasonable attorneys' fees, in connection with such civil action, and shall be fully protected in suspending all or part of its activities under the Master Lease Agreement until a final judgment in such action is received.

(h) The Acquisition Fund Custodian may consult with counsel of its own choice and shall have full and complete authorization and protection with the opinion of such

counsel. The Acquisition Fund Custodian shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind unless caused by its willful misconduct.

(i) City shall reimburse the Acquisition Fund Custodian for all reasonable costs and expenses, including those of the Acquisition Fund Custodian's attorneys, agents and employees incurred for extra-ordinary administration of the Acquisition Fund and the performance of the Acquisition Fund Custodian's powers and duties hereunder in connection with any Event of Default under the Master Lease Agreement, or in connection with any dispute between Lender and City concerning the Acquisition Fund.

## 2. Acquisition of Property.

(a) Acquisition Contracts. City will arrange for, supervise and provide for, or cause to be supervised and provided for, the acquisition, renovation and improvement of the Subject Property, with moneys available in the Acquisition Fund. City represents the estimated costs of the Subject Property are within the funds estimated to be available therefor, and Lender makes no warranty or representation with respect thereto. Lender shall have no liability under any of the acquisition, renovation or construction contracts. City shall obtain all necessary permits and approvals, if any, for the acquisition, renovation and improvement of the Subject Property, and the operation and maintenance thereof.

(b) Authorized Acquisition Fund Disbursements. Disbursements from the Acquisition Fund shall be made for the purpose of paying (including the reimbursement to City for advances from its own funds to accomplish the purposes hereinafter described) the cost of the acquisition, renovation and improvement of the Subject Property.

(c) Requisition Procedure. No disbursement from the Acquisition Fund shall be made unless and until Lender has approved such requisition; Lender will not take more than ten days for the approval process. Prior to disbursement from the Acquisition Fund there shall be filed with the Acquisition Fund Custodian a requisition for such payment in the form of Disbursement Request attached hereto as Schedule 1, stating each amount to be paid and the name of the person, firm or corporation to whom payment thereof is due. Each such requisition shall be signed by an authorized representative of City (an "Authorized Representative") and by Lender, and shall be subject to the following:

### 1. Inclusion in the Disbursement Request of certifications of City to the effect that:

(i) an obligation in the stated amount has been incurred by City, and that the same is a proper charge against the Acquisition Fund for costs relating to the Subject Property identified in the Master Lease Agreement, and has not been paid; (ii) the Authorized Representative has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or

discharged before such payment is made; (iii) such requisition contains no item representing payment on account, or any retained percentages which City is, at the date of such certificate, entitled to retain; and (iv) the Subject Property is insured in accordance with the Master Lease Agreement.

2. The disbursement shall occur during the Acquisition Period applicable to the Subject Property.
3. There shall exist no Event of Default (nor any event which, with notice or lapse of time or both, would become an Event of Default).
4. No material adverse change in City's financial condition shall have occurred since the date of the Master Lease Agreement.
5. The property or work that is the subject of the disbursement request is acceptable or completed such that it is approved for payment.

3. Deposit to Acquisition Fund. Upon satisfaction of the conditions specified in Section 3.04 of the Master Lease Agreement, Lender will cause all proceeds of the Master Lease Agreement not distributed at closing to be deposited in the Acquisition Fund. City agrees to pay any costs with respect to the Subject Property in excess of amounts available therefor in the Acquisition Fund.

4. Excess in Acquisition Fund. Following the final disbursement from the Acquisition Fund at the end of the Acquisition Period, or termination of the Acquisition Fund as otherwise provided, the Acquisition Fund Custodian shall transfer any remainder from the Acquisition Fund to Lender for application to amounts owed under the Master Lease Agreement in accordance with Section 4.07(b) of the Master Lease Agreement.

5. Security Interest. The Acquisition Fund Custodian and City acknowledge and agree that the Acquisition Fund and all proceeds thereof are being held by Acquisition Fund Custodian for disbursement or return as set forth herein. City hereby grants to Lender a first priority perfected security interest in the Acquisition Fund, and all proceeds thereof, and all investments made with any amounts in the Acquisition Fund. If the Acquisition Fund, or any part thereof, is converted to investments as set forth in this agreement, such investments shall be made in the name of Acquisition Fund Custodian and the Acquisition Fund Custodian hereby agrees to hold such investments as bailee for Lender so that Lender is deemed to have possession of such investments for the purpose of perfecting its security interest.

6. Control of Acquisition Account. In order to perfect Lender's security interest by means of control in (i) the Acquisition Fund established hereunder, (ii) all securities entitlements, investment property and other financial assets now or hereafter credited to the Acquisition Fund, (iii) all of City's rights in respect of the Acquisition Fund, such securities entitlements, investment property and other financial assets, and (iv) all products, proceeds and revenues of

and from any of the foregoing personal property (collectively, the "Collateral"), Lender, City and Acquisition Fund Custodian further agree as follows:

(a) All terms used in this Section 6 which are defined in the Commercial Code of the State of Tennessee ("Commercial Code") but are not otherwise defined herein shall have the meanings assigned to such terms in the Commercial Code, as in effect on the date of this Agreement.

(b) Acquisition Fund Custodian will comply with all entitlement orders originated by Lender with respect to the Collateral, or any portion of the Collateral, without further consent by City.

(c) Acquisition Fund Custodian hereby represents and warrants (a) that the records of Acquisition Fund Custodian show that City is the sole owner of the Collateral, (b) that Acquisition Fund Custodian has not been served with any notice of levy or received any notice of any security interest in or other claim to the Collateral, or any portion of the Collateral, other than Lender's claim pursuant to this Agreement, and (c) that Acquisition Fund Custodian is not presently obligated to accept any entitlement order from any person with respect to the Collateral, except for entitlement orders that Acquisition Fund Custodian is obligated to accept from Lender under this Agreement and entitlement orders that Acquisition Fund Custodian, subject to the provisions of paragraph (e) below, is obligated to accept from City.

(d) Without the prior written consent of Lender, Acquisition Fund Custodian will not enter into any agreement by which Acquisition Fund Custodian agrees to comply with any entitlement order of any person other than Lender or, subject to the provisions of paragraph (e) below, City, with respect to any portion or all of the Collateral. Acquisition Fund Custodian shall promptly notify Lender if any person requests Acquisition Fund Custodian to enter into any such agreement or otherwise asserts or seeks to assert a lien, encumbrance or adverse claim against any portion or all of the Collateral.

(e) Except as otherwise provided in this paragraph (e) and subject to Section 1(b) hereof, Acquisition Fund Custodian may allow City to effect sales, trades, transfers and exchanges of Collateral within the Acquisition Fund, but will not, without the prior written consent of Lender, allow City to withdraw any Collateral from the Acquisition Fund. Acquisition Fund Custodian acknowledges that Lender reserves the right, by delivery of written notice to Acquisition Fund Custodian, to prohibit City from effecting any withdrawals (including withdrawals of ordinary cash dividends and interest income), sales, trades, transfers or exchanges of any Collateral held in the Acquisition Fund. Further, Acquisition Fund Custodian hereby agrees to comply with any and all written instructions delivered by Lender to Acquisition Fund Custodian (once it has had a reasonable opportunity to comply therewith) and has no obligation to, and will not, investigate the reason for any action taken by Lender, the amount of any obligations of City to Lender, the validity of any of Lender's claims against or agreements with City, the existence of any defaults under such agreements, or any other matter.

(f) City hereby irrevocably authorizes Acquisition Fund Custodian to comply with all instructions and entitlement orders delivered by Lender to Acquisition Fund Custodian.

(g) Acquisition Fund Custodian will not attempt to assert control, and does not claim and will not accept any security or other interest in, any part of the Collateral, and Acquisition Fund Custodian will not exercise, enforce or attempt to enforce any right of setoff against the Collateral, or otherwise charge or deduct from the Collateral any amount whatsoever.

(h) Acquisition Fund Custodian and City hereby agree that any property held in the Acquisition Fund shall be treated as a financial asset under such section of the Commercial Code as corresponds with Section 8-102 of the Uniform Commercial Code, notwithstanding any contrary provision of any other agreement to which Acquisition Fund Custodian may be a party.

(i) Acquisition Fund Custodian is hereby authorized and instructed, and hereby agrees, to send to Lender at its address set forth in Section 7 below, concurrently with the sending thereof to City, duplicate copies of any and all monthly Acquisition Fund statements or reports issued or sent to City with respect to the Acquisition Fund.

7. Miscellaneous. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Master Lease Agreement. This agreement may not be amended except in writing signed by all parties hereto. This agreement may be executed in one or more counterparts, each of which shall be deemed to be an original instrument and each shall have the force and effect of an original and all of which together constitute, and shall be deemed to constitute, one and the same instrument. Notices hereunder shall be made in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class postage prepaid, or delivered to an express carrier, charges prepaid, or sent by facsimile with electronic confirmation, addressed to each party at its address below:

If to Lender:                      Banc of America Public Capital Corp  
555 California Street, 4<sup>th</sup> Floor  
Mail Code: CA5-705-04-01  
San Francisco, CA 94104  
Attn: Contract Administration  
Fax: 415-765-7373

If to City:                              City of Memphis, Tennessee  
125 North Main Street, Room 336  
Memphis, Tennessee 38103  
Attn: Finance Director  
Fax: 901-576-6193

If to Acquisition  
Fund Custodian:                      Deutsche Bank National Trust Company  
101 California Street, 46th Floor  
San Francisco, CA 94111  
Attn: Raafat Albert Sarkis  
Phone: 415-617-2801  
Fax: 415-617-4270



IN WITNESS WHEREOF, the parties have executed this Acquisition Fund and Account Control Agreement as of the date first above written.

**BANC OF AMERICA PUBLIC  
CAPITAL CORP**, as Lender

**CITY OF MEMPHIS, TENNESSEE**,  
as City

By: \_\_\_\_\_  
Authorized Agent

By: \_\_\_\_\_  
Mayor

**DEUTSCHE BANK NATIONAL TRUST COMPANY**,  
as Acquisition Fund Custodian

By: \_\_\_\_\_  
Authorized Officer

## SCHEDULE 1

### FORM OF DISBURSEMENT REQUEST

Re: Master Lease Agreement dated as of December 30, 2010 by and between Banc of America Public Capital Corp, as Lender, and the City of Memphis, Tennessee, as Lessee (the "Master Lease Agreement")

In accordance with the terms of the Acquisition Fund and Account Control Agreement, dated as of October \_\_, 2011 (the "Acquisition Fund and Account Control Agreement") by and among Banc of America Public Capital Corp ("Lender"), the City of Memphis, Tennessee ("City") and Deutsche Bank National Trust Company (the "Acquisition Fund Custodian"), the undersigned hereby requests the Acquisition Fund Custodian pay the following persons the following amounts from the Acquisition Fund created under the Acquisition Fund and Account Control Agreement (the "Acquisition Fund") for the following work, materials or purposes.

Payee's Name and Address	Invoice Number	Dollar Amount	Work, Materials or Purpose

(Attach invoices to this Disbursement Request)

The undersigned hereby certifies as follows:

(i) An obligation in the stated amount has been incurred by City, and the same is a proper charge against the Acquisition Fund for costs relating to the Subject Property identified in the Master Lease Agreement, and has not been paid. Attached hereto is the original invoice with respect to such obligation.

(ii) The undersigned, as Authorized Representative, has no notice of any vendor's, mechanic's or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made.

(iii) This requisition contains no item representing payment on account, or any retained percentages which City is, at the date hereof, entitled to retain.

(iv) The Subject Property is insured in accordance with the Master Lease Agreement.

(v) No Event of Default, and no event which with notice or lapse of time, or both, would become an Event of Default, under the Master Lease Agreement has occurred and is continuing at the date hereof.

(vi) The disbursement shall occur during the Acquisition Period for the Subject Property.

(vii) No material adverse change in City's financial condition has occurred since the date of the Master Lease Agreement.

(viii) The property or work that is the subject of this disbursement request is acceptable to the City or completed such that it is approved for payment.

Dated: \_\_\_\_\_

**CITY OF MEMPHIS, TENNESSEE**

By: \_\_\_\_\_  
Authorized Representative

Disbursement of funds from the Acquisition  
Fund in accordance with the foregoing  
Disbursement Request hereby is authorized.

**BANC OF AMERICA PUBLIC CAPITAL CORP,**  
as Lender under the Master Lease Agreement

By: \_\_\_\_\_  
Authorized Agent

**OPINION OF COUNSEL TO LESSEE**  
(to be typed on letterhead of counsel)

Banc of America Public Capital Corp  
555 California Street, 4th Floor  
San Francisco, California 94104

Re: Schedule of Property No. 2, dated October \_\_, 2011 to Master Equipment Lease/Purchase Agreement, dated as of December 30, 2010, between Banc of America Public Capital Corp, as Lessor, and the City of Memphis, Tennessee, as Lessee

Ladies and Gentlemen:

As legal counsel to the City of Memphis, Tennessee ("*Lessee*"), I have examined (a) an executed counterpart of a certain Master Equipment Lease/Purchase Agreement, dated as of December 30, 2010, and Exhibits thereto by and between Banc of America Public Capital Corp ("*Lessor*") and Lessee (the "*Agreement*") and an executed counterpart of Schedule of Property No. 2, dated October \_\_, 2011, by and between Lessor and Lessee (the "*Schedule*"), which, among other things, provides for the lease of certain property listed in the Schedule (the "*Equipment*"), (b) an executed counterpart of the ordinances or resolutions of Lessee which, among other things, authorize Lessee to execute the Agreement and the Schedule and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions. The Schedule and the terms and provisions of the Agreement incorporated therein by reference together with the Rental Payment Schedule attached to the Schedule are herein referred to collectively as the "Lease," and the Lease are referred to collectively as the "Transaction Documents."

Based on the foregoing, I am of the following opinions:

1. Lessee is a public body corporate and politic, duly organized and existing under the laws of the State, and is a political subdivision of a state within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the "Code") and the obligations of Lessee under the Agreement will constitute an obligation of Lessee within the meaning of Section 103(a) of the Code, notwithstanding Section 103(b) of the Code.
2. Lessee has the requisite power and authority to lease and acquire the Equipment and to execute and deliver the Transaction Documents and to perform its obligations under the Lease.
3. The Lease has been duly authorized, approved, executed and delivered by and on behalf of Lessee and the Transaction Documents are valid and binding obligations of Lessee enforceable in accordance with their respective terms.
4. The authorization, approval, execution and delivery of the Transaction Documents and all other proceedings of Lessee relating to the transactions contemplated thereby

have been performed in accordance with all open meeting laws, public notice laws, public bidding laws and all other applicable state or federal laws.

5. There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Transaction Documents or the security interest of Lessor or its assigns, as the case may be, in the Equipment or other collateral thereunder.

All capitalized terms herein shall have the same meanings as in the Transaction Documents unless otherwise provided herein. Lessor and its successors and assigns, and any counsel, including but not limited to Smith, Gambrell & Russell, LLP, rendering an opinion on the tax-exempt status of the interest components of the Rental Payments, are entitled to rely on this opinion.

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

City of Memphis/City Attorney's Office

Dated: October \_\_, 2011

Address: 125 North Main, Room 336

Memphis, Tennessee 38103-2079

Telephone No.: 901-576-6614

## CERTIFICATE

The undersigned, a duly appointed and acting Comptroller of the City of Memphis, Tennessee ("*Lessee*") certifies as follows:

A. The following listed persons are duly elected and acting officials of Lessee (the "*Officials*") in the capacity set forth opposite their respective names below and that the facsimile signatures are true and correct as of the date hereof;

B. The Officials are duly authorized, on behalf of Lessee, to negotiate, execute and deliver the Master Equipment Lease/Purchase Agreement dated as of December 30, 2010 and the Schedule No. 1 to the Master Equipment Lease/Purchase Agreement (the "*Agreement*") by and between Lessee and Banc of America Public Capital Corp.

Name of Official	Title	Signature
A C Wharton, Jr.	Mayor	_____
Patrice Thomas	Comptroller	_____

C. The Lessee is a public body corporate and politic of the State of Tennessee, validly organized and existing under the Constitution and laws of the State of Tennessee with full power and authority to execute, deliver and perform its obligations under the Agreement.

D. The Lessee has duly authorized all actions required to be taken by it for the execution, delivery and due performance of the Agreement, and any and all such other agreements and documents as may be required to be executed, delivered or performed by the Lessee in order to carry out, give effect to and consummate the transactions contemplated on its part hereby and by Agreement and any document related thereto and none of such actions have been modified, repealed, revoked or rescinded.

E. The Agreement has been executed and delivered and constitute the valid and legally binding and enforceable obligations of the Lessee.

F. There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the knowledge of the Lessee, threatened against or affecting the Lessee (or, to the knowledge of the Lessee, any meritorious basis therefor) (i) attempting to limit, enjoin or otherwise restrict or prevent the Lessee from functioning or contesting or questioning the existence of the Lessee or the titles of the present Mayor or members of the City Council to their respective offices or (ii) wherein an unfavorable decision, ruling or finding would (A) adversely affect the existence or powers of the Lessee or the validity or enforceability of the Agreement or any agreement or instrument to which the Lessee is a party and which is used or contemplated for use and the confirmation of the transactions contemplated thereby; or (B) materially adversely affect (1) the financial condition or results of operations of the Lessee; or (2) the transactions contemplated by the Agreement.

G. The execution and delivery by the Lessee of the Agreement, and the other documents contemplated thereby, and the compliance by the Lessee with the provisions thereof, will not conflict with or constitute on the part of the Lessee a violation of, breach of or default under (i) any constitutional provision, statute, indenture, mortgage, lease, resolution, note agreement or other agreement or instrument to which the Lessee is a party or by which the Lessee is bound; or (ii) any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Lessee or any of its properties.

H. The Lessee is governed by a Mayor and City Council that has been duly elected in accordance with the Constitution and laws of the State of Tennessee and the Charter of the City of Memphis, Tennessee, all of the members of which are serving unexpired terms thereon.

I. The Lessee acknowledges that Smith, Gambrell and Russell, LLP has represented Lessor and not the Lessee in this transaction. The Lessee has been separately represented in this transaction.

J. Patrice Thomas is the duly appointed and acting Comptroller of the City of Memphis, Tennessee.

Dated: October \_\_, 2011

By: \_\_\_\_\_

Name: Carmelita Carletos-Drayton

Title: Assistant City Attorney

(The signer of this Certificate cannot be listed above as authorized to execute the Agreements.)